No. 16-1027

In the Supreme Court of the United States

RYAN AUSTIN COLLINS,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

On Writ of Certiorari to the Supreme Court of Virginia

BRIEF OF AMICUS CURIAE THE NATIONAL RIFLE ASSOCIATION FREEDOM ACTION FOUNDATION IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The National Rifle Association Freedom Action Foundation ("Freedom Action Foundation") is a public charity dedicated to provision of non-partisan Second Amendment education to all American citizens. The Freedom Action Foundation's primary mission is to ensure that gun-owners are registered to vote and educated about issues that affect their fundamental rights. The Freedom Action Foundation has a strong interest in ensuring that this Court's decision properly respects the fundamental role the sanctity of the home plays in safeguarding many of our constitutional rights, including not only the right against unreasonable searches and seizures, but also the right to keep and bear arms in defense of oneself, one's family, and one's home.

SUMMARY OF ARGUMENT

Ryan Austin Collins was convicted in the circuit court of Albemarle County on charges related to his dealings with a stolen motorcycle. Collins's arrest and prosecution stemmed from a search of the motorcycle in question, while it was parked in his yard, in a partially enclosed structure a few feet from his house.

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[1] Pursuant to SUP. CT. R. 37.3(a), amicus certifies that all parties have given written consent to the filing of this brief. Pursuant to SUP. CT. R. 37.6, amicus certifies that no counsel for any party authored this brief in whole or in part, no party or party's counsel made a monetary contribution to fund its preparation or submission, and no person other than amicus, its members, or its counsel made such a monetary contribution.

Collins sought to suppress the evidence yielded by that search on the grounds that it had been obtained in violation of the Fourth Amendment, in a warrantless search of the curtilage around his home. The Supreme Court of Virginia rejected that argument, holding that the "warrantless search of the motorcycle was justified under the automobile exception to the warrant requirement of the Fourth Amendment," notwithstanding the fact that the "automobile" was parked within the curtilage of Collins's home. *Collins v. Commonwealth*, S.E.2d 611, 617 (Va. 2016).

1. The Virginia Supreme Court's holding encroaches upon one of the central liberties that the Fourth Amendment was meant to protect: the sanctity of the home. The home is the sphere where a person's interests in property and privacy coincide, and it is therefore also the sphere in which that person has the strongest right to be secure against unwarranted search and seizure. Pre-revolutionary caselaw in England and the Colonies reveals widespread antagonism against certain investigative techniques employed by the Crown's agents. That antagonism fueled efforts to ensure that the newly formed American government would not have the power to violate "the sanctity of a man's home and the privacies of life." *Boyd v. United States*, 116 U.S. 616, 630 (1886). Drawing upon the adage, ancient even then, that a man's house is his castle, the ratifiers of the Fourth Amendment sought to ensure that the home would remain a sanctuary against unwelcome intrusion, even by the govern-

ment. *See* WILLIAM J. CUDDIHY, THE FOURTH AMENDMENT: ORIGINS AND ORIGINAL MEANING 602–1791, at lix (2009). Whatever arguments from prudence may underwrite the automobile exception, allowing the exception to swallow up the protection at the heart of the Fourth Amendment would be a betrayal of its animating principles.

2. Allowing the police to conduct a warrantless search of a vehicle within the curtilage of Petitioner's home also ignores the fundamental role the sanctity of the home has played in the development of many of our other constitutional rights. The Fourth Amendment does not stand alone in safeguarding a citizen's rights in his own home against all but the most compelling justifications for intrusion. The primacy of the home also forms the cornerstone of several other fundamental constitutional liberties, including the right to armed self-defense protected by the Second Amendment. The scope of the protection of the home in the Fourth Amendment context has long been informed by these related constitutional protections, and the Court should look to them for guidance in deciding the question presented in this case. In particular, the case-law in the context of the right to self-defense demonstrates that the protection afforded the home should extend to the area within the curtilage of the home where the search at issue in this case occurred.

ARGUMENT

When the police entered Collins's property to search a motorcycle parked next to his house, they encroached on a sphere that has traditionally commanded the highest level of protection against public and private intrusion—the home and the "curtilage," or the area and structures immediately surrounding it. Since long before the founding of the American Republic and the ratification of the Fourth Amendment, our legal traditions understood this space to be inviolable—a principle so well accepted as to have become embedded in a maxim still heard today: "a man's house is his castle." Early backlash against government searches of the home was the forge in which the right against unreasonable searches was first fashioned. To the extent traditional protections of private property against trespass continue to have any role in shaping modern Fourth Amendment doctrine, the warrantless search of Collins's home in this case cannot stand.

This conclusion is bolstered by the fundamental role the inviolability of the home has played in the development of many other of our constitutional rights, especially the right to armed self-defense that stands at the core of the Second Amendment. There, too, our traditions have long viewed the home as special. This Court's consideration of this case should be informed by these other constitutional rights.

I. The History of the Right Against Unreasonable Searches and Seizures Demonstrates that that Right Has Its Highest and Most Urgent Application in the Home.

A. The Fourth Amendment Has Its Roots in the Legal and Political Backlash Against the Crown's Inspection of Private Homes in the Period Leading to the American Revolution.

The history leading to the ratification of the Fourth Amendment demonstrates that the Amendment's first and highest purpose is to protect the sanctity of the home. During the years leading up to the American Revolution, there was widespread discontent with a set of English practices related to government inspections of private homes. The threat of general warrants, especially in connection with charges of seditious libel and with inspections related to excise taxes, allowed the Crown's writ-bearing agents almost complete freedom to hammer in the doors of houses. With few exceptions, the King's magistrates were free to look anywhere and seize anything. William Cuddihy & B. Carmon Hardy, *A Man's House Was Not His Castle: Origins of the Fourth Amendment to the United States Constitution*, 37 WM. & MARY Q. 371, 372 (1980).

As the number of items taxable under the excise grew during the eighteenth century, so did the scope of the exciseman's authority. "When an item became taxable under the excise, the houses of everyone

whose occupation was concerned with it became subject to search." *Id.* at 382. For instance, in 1763, cider for private use appeared on the excise list. Since cider was almost universally made and consumed throughout England, the addition drastically increased the scope of excise searches. The proposal evoked wide popular outrage. The London city government claimed that exposing private houses to capricious search was a "badge of slavery" more indicative of despotic governments than England. CUDDIHY, THE FOURTH AMENDMENT at 467.

In a series of cases, English constitutional jurisprudence responded to these concerns, crystallizing the rights against unreasonable government searches and seizures that the Framers would later inscribe into the Fourth Amendment.

1. The *Wilkes Cases*

The foundational sources from the pre-Revolutionary period for the legal structure undergirding the Fourth Amendment were the so-called *Wilkes Cases* (1763–1769). In 1763, *The North Briton*, an opposition newspaper, published an anonymous condemnation of the secretaries of state as "wretched" puppets of Lord Bute, "foul dregs of his power and the tools of corruption and despotism." No. 45 (Sat., 23 Apr. 1760), *North Briton* (1763), vol. 2, pp. 227, 235 (*quoted in* CUDDIHY, THE FOURTH AMENDMENT at 440). Lord Halifax, secretary of state, signed a general search warrant authorizing the Crown's agents to locate the authors, printers, and publishers of the paper. After a number of

searches and interrogations, it was discovered that John Wilkes was the author of the paper. Wilkes was arrested, and his house subjected to search.

Wilkes and his co-workers brought numerous actions for trespass against those involved in conducting the search. In *Huckle v. Money*, 95 Eng. Rep. 768 (C.P. 1763), Huckle, a journeyman of the printer, brought suit claiming trespass and false imprisonment by the King's messengers. The jury found for Huckle, and Charles Pratt, Chief Justice of the Court of Common Pleas, wrote:

> To enter a man's house by virtue of a nameless warrant, in order to procure evidence, is worse than the Spanish Inquisition; a law under which no Englishman would wish to live an hour; it was a most daring public attack made upon the liberty of the subject.

Huckle, 95 Eng. Rep. at 769. In *Wilkes v. Wood*, 98 Eng. Rep. 489 (C.P. 1763), Wilkes brought a suit in trespass against Robert Wood, the undersecretary of state who had been present during the search of Wilkes's house. Wilkes argued that the primary freedom at stake was the sanctity of his home: "[i]n vain has our house been declared, by the law, our asylum and defence, if it is capable of being entered, upon any frivolous or no pretence at all, by a Secretary of State." *Id.* at 490. Chief Justice Pratt once again opined against the King's agents, holding that there was no right "to force persons' houses, break open escrutores,

seize their papers, upon a general warrant." *Id.* at 498.

2. *Entick v. Carrington*

Two years later, Chief Justice Pratt, recently made Lord Camden, confronted the same issue in *Entick v. Carrington*, 19 Howell's St. Trials 1029 (C. P. 1765). As this Court recognized in *United States v. Jones*, 565 U.S. 400 (2012), *Entick* furnished early American courts with a common law framework for questions of search and seizure. John Entick brought an action in trespass against four of the King's messengers who had searched Entick's home for books and papers related to a charge of seditious libel. The messengers conducted their search under the authority of a general warrant issued by secretary of state Lord Halifax. Holding for Entick, Lord Camden observed that the common law offered no justification for the actions of the messengers and rejected the proposition that the Crown could enter its subjects' domiciles at will: "every invasion of private property, be it ever so minute, is a trespass." *Id.* at 1066. For the subsequent jurisprudence of American courts, *Entick* stood for the proposition that it was not the physical break-in or the rummaging in drawers that constituted the essence of potential government overreach, but rather the invasion of the indefeasible rights of personal security, liberty, and private property. *See Boyd*, 116 U.S. at 630 (noting that Lord Camden's opinion laid down the basic principles of the Fourth

Amendment). *See also* Laura K. Donohue, *The Original Fourth Amendment*, 83 U. CHI. L. REV. 1181, 1198 (2016).

3. *Paxton's Case*

In the Colonies, *Paxton's Case* (1761) and the remarks of James Otis provide the clearest articulation of the widespread disapprobation of the Crown's investigative methods. The controversy emerged in 1755 when the governor of Massachusetts began issuing writs of assistance to customs officers in an attempt to prevent illegal trade with Canada. Charles Paxton, a customs officer, asked the Superior Court for the first such writ in June of 1755. In 1761, members of the "Society for Promoting Trade and Commerce Within the Province" petitioned the Superior Court of Massachusetts to enjoin the use of the writs. CUDDIHY, THE FOURTH AMENDMENT at 381.

James Otis, a young Massachusetts lawyer, argued that "one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle . . . . He is as well guarded as a prince in his castle. This writ [of assistance] . . . would totally annihilate this privilege." Brief of James Otis, *Paxton's Case* (Ma. Sup. Ct. 1761). Although the court would find for Paxton and issue the writ, Otis and his arguments against the practices of the Crown galvanized popular opposition to generalized invasions of private homes by the government. "He not only identified the need for sanctuary and immunity in the home with private property and natural law but also

provoked a Revolutionary determination." Cuddihy & Hardy, *A Man's House Was Not His Castle* at 394. John Adams, then a member of the audience, remarked: "Every man of a crowded Audience appeared to me to go away, as I did, ready to take up Arms against Writs of Assistants." M. H. SMITH, THE WRITS OF ASSISTANCE CASE 262 (1978).

B. In Its Original Context, the Fourth Amendment Was Meant Principally To Protect the Sanctity and Privacy of American Homes.

Lord Camden's holding in *Entick* influenced the drafters of the Fourth Amendment, who placed its protections of the home against general warrants on a constitutional footing. *See* Richard A. Epstein, Entick v. Carrington *and* Boyd v. United States*: Keeping the Fourth and Fifth Amendments on Track*, 82 U. CHI. L. REV. 27, 32 (2015). "In 1787–88, commentators on the Constitution denounced general warrants and searches not just because they were general but because they abridged the security that houses afforded from unwelcome intrusion. That houses were castles was the most recurrent theme of those commentaries." CUDDIHY, THE FOURTH AMENDMENT at 766. The Antifederalists feared that a Constitution without a prohibition on unreasonable search and seizure would subject "houses, those castles considered sacred by English law . . . to the insolence and oppression of office." *To the People of Maryland*, p. 2, col. 1. " 'A Farmer' considered general warrants intolerable be-

cause a citizen's house was his 'asylum' and 'sanctuary.'" *Maryland Gaz.: or the Baltimore Advtr.*, Fri., 15 Feb. 1788 (vol. 5, no. 351), p. 2, col. 2 (*quoted in* CUDDIHY, THE FOURTH AMENDMENT at 766).

C. This Court's Precedents Confirm that the Fourth Amendment's Highest Purpose Is To Defend the Sanctity of the Home.

The early decisions of American courts further demonstrate that the Fourth Amendment's first and highest purpose is the protection of the home. In *Boyd v. United States*, 116 U.S. 616 (1886), this Court, relying upon the opinion of Lord Camden in *Entick v. Carrington*, held that the principles articulated in it "affect the very essence of constitutional liberty and security." *Boyd*, 116 U.S. at 630. The Court found that the Fourth Amendment applied "to all invasions on the part of the government and its employes of the sanctity of a man's home and the privacies of life." *Id.*

> It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty, and private property, where that right has never been forfeited by his conviction of some public offense . . . .

Id.

The centrality of the home for the Fourth Amendment has also been recognized in more recent opinions

of this Court. Holding that encroaching upon the respondent's porch with a drug-sniffing dog constituted an unwarranted search within the curtilage of the home, this Court noted that "when it comes to the Fourth Amendment, the home is first among equals. At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)).

While the "reasonable expectations of privacy" test this Court crafted in *Katz v. United States*, 389 U.S. 347 (1967), seemed for a time to shift the focus of Fourth Amendment jurisprudence off of traditional, trespass-based ideas of the inviolability of the home, this Court's more recent jurisprudence has clarified that the traditional rules of property law continue to inform the scope of the Constitution's protection against unreasonable searches and seizures. *See Jones*, 565 U.S. at 406–08. Under the approach adopted by this Court's holding in *Jones*, it is plain that Virginia erred in sanctioning the search of Collins's home in this case. For as shown above, if *any* principle was an undisputed part of "that degree of privacy against government that existed when the Fourth Amendment was adopted," *id.* at 406, it is that in the ordinary course, the Government must obtain a warrant before intruding upon the sanctity of a man's home to search for evidence of wrongdoing.

II. The Sanctity of the Home Also Plays a Central Role in Safeguarding Many of Our Other Fundamental Constitutional Freedoms.

The Fourth Amendment tradition is not alone in according the most fundamental protection to the sanctity of the home. Many other constitutional rights—including, most prominently, the right to armed self-defense that is "the *central component*" of the Second Amendment, *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008)—also safeguard the home against public or private intrusion. This Court's determination of the scope of the Fourth Amendment's protection of the home in this case should be informed by the protections afforded the home in the context of these other fundamental rights.

A. The Right to Armed Self-Defense—the Central Component of the Second Amendment—Applies with Full Force Within the Home.

The inviolability of the home has been central to Anglo-American understandings of the right to armed self-defense for centuries. This is perhaps best illustrated by the ancient common-law "castle doctrine."

In seventeenth- and eighteenth-century English law, killing another in self-defense was ordinarily not lawful except "in sudden and violent cases when certain and immediate suffering would be the consequence of waiting for the assistance of the law," such

that the one killing in self-defense "had no other possible (or, at least, probable) means of escaping from his assailant." 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *184 (Coleridge ed., 1825). But as Sir Matthew Hale explained in his influential treatise, this "duty to retreat" had no application where a criminal invaded a man's house; for one "being in his own house need not fly, as far as he can, as in other cases of *se defendendo*, for he hath the protection of his house to excuse him from flying." 1 SIR MATTHEW HALE, HISTORIA PLACITORUM CORONAE 486 (Sollom Emlyn ed., 1736). After all, as Lord Coke put it, "a man's house is his castle, *et domus sua cuique est tutissimum refugium* [and the home of each man is his safest refuge]." SIR EDWARD COKE, THE THIRD PART OF THE INSTITUTES OF THE LAWS OF ENGLAND 162 (4th ed. 1669) (1644).

Blackstone's Commentaries explain this doctrine in a way that sharply underscores how fundamental the protection of the home was to the English law of this period. "[T]he law of England," Blackstone emphasized,

> has so particular and tender a regard to the immunity of a man's house, that it styles it his castle, and will never suffer it to be violated with impunity; agreeing herein with the sentiments of antient Rome, as expressed in the words of Tully; *quid est sanctius, quid omni relegione munitius, quam domus uniuscujusque civium?* [What is

> more sacred, what is better secured by all religion, than each citizen's house?]

BLACKSTONE'S COMMENTARIES, *supra*, at *223. And thus, Blackstone concluded, when a man secure in his own home is confronted by a housebreaker, the law protects his "natural right of killing the aggressor, if he can." *Id.*

This inviolable right to safety and security in the home was protected with no less fervor on this side of the Atlantic. As James Wilson, a leading Framer and Supreme Court Justice, explained in his widely read Lectures on Law, "every man's house is deemed, by the law, to be his castle." 3 JAMES WILSON, THE WORKS OF THE HONOURABLE JAMES WILSON 85 (1804). Accordingly, "[h]omicide is enjoined, when it is necessary for the defence of one's . . . house," and "one may assemble people together in order to protect and defend his house." *Id.* at 84–85.

The early American cases steadfastly adhere to this rule. A jury charge in an early Pennsylvania case, for example, explained that "a dwelling-house" was a "castle for family defence; and that a homicide in resistance of a felony is justifiable, especially if committed in the night." *Donoghue v. Philadelphia Cty.*, 2 Pa. 230, 231 (1845). The Louisiana Supreme Court likewise noted that there were "cases of forcible trespass which would justify a homicide necessary to prevent it: as for example, in the defence of a man's house, which is his castle, against a forcible entry so violent as to require this extreme resort." *Carmouche v.*

Bouis, 6 La. Ann. 95, 97 (1851). The Supreme Court of California explained that "[e]very man's house, in this country, is his castle, and no one has a right to invade it without his consent. And if he shall attempt it, he has a right to use as much force as may be necessary to prevent it." *People v. Rodriguez*, 10 Cal. 50, 54 (1858). And the Michigan Supreme Court declared that while ordinarily homicide was excusable as self-defense only where "serious bodily harm of a permanent character" was "unavoidable by other means," "[a] man is not, however, obliged to retreat if assaulted in his dwelling, but may use such means as are absolutely necessary to repel the assailant from his house, or to prevent his forcible entry, even to the taking of life." *Pond v. People*, 8 Mich. 150, 177 (1860).

The sanctity of the home has thus long played a fundamental role in shaping Anglo-American understandings of self-defense. And these understandings, in turn, inform the meaning of the Second Amendment right to keep and bear arms. After all, self-defense, this Court has explained is "the *central component* of the [Second Amendment] right." *Heller*, 554 U.S. at 599. It is thus no surprise that this Court first enforced the individual right to bear arms against a ban on keeping firearms *in the home*. *Id.* at 628.

B. Throughout History, the Shared Importance of the Home to Both the Right to Self-Defense and the Right Against Unreasonable Searches Has Informed the Scope of Both Protections.

From the very beginning, the law has also recognized that the right to self-defense—safeguarded by the Second Amendment—*shares* this overriding solicitude for the home with the Fourth Amendment right against unreasonable searches and seizures. The history and shape of each right thus, to some extent, informs the scope of the other.

This is evident from the King's Bench's 1604 decision in *Semayne's Case*, 77 Eng. Rep. 194 (K.B. 1603). Lord Coke's report of that decision still stands as perhaps the most memorable articulation of the importance of the home in Anglo-American law, and it is often cited as the source of the phrase "a man's house is his castle." Importantly, the decision's primary analytical move is to draw on principles of self-defense doctrine to define the right against government searches.

Peter Semayne was a creditor to one George Berisford, who resided in a house in Blackfriars, London, with a joint tenant, Richard Gresham. Berisford died in debt to Semayne, and Semayne sought to recover on the debt by taking possession of certain goods that Berisford's had owned when he died—and that were still kept in the house he had shared with Gresham. To that end, Semayne secured a writ for the

Sheriff of London to seize the goods in question from the house in Blackfriars—which Gresham now owned outright and still occupied. But when the Sheriff arrived in Blackfriars to execute the writ, Gresham refused to allow him to enter the home. Semayne sued Gresham for frustrating the execution of the writ. *Id.* at 194–95.

The King's Bench decided against Semayne—and took the occasion to broadly state the fundamental status of the home in English law. The court began with the protections afforded the home in the law of manslaughter:

> the house of every one is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose; and although the life of man is a thing precious and favoured in law . . . if thieves come to a man's house to rob him, or murder, and the owner or his servants kill any of the thieves in defence of himself and his house, it is not felony, and he shall lose nothing.

Id. at 195. Because a man's house was accorded such fundamental protection by the criminal law, the court reasoned, "it is not lawful for the sher[iff] . . . to break [someone's] house . . . to execute any process at the suit of any subject,"

> for thence would follow great inconvenience that men as well in the night as in the day should have their houses (which are their

> castles) broke, by colour whereof great damage and mischief might ensue; for by colour thereof, on any feigned suit, the house of any man at any time might be broke when the defendant might be arrested elsewhere, and so men would not be in safety or quiet in their own houses[.]

Id. at 198. Accordingly, only where a sheriff sought to execute "the K[ing's] process" could he enter one's house without their consent—and even then, "he ought to signify the cause of his coming, and to make request to open doors." *Id* at 195.

The implications of this interplay between the right to home-defense and the right against government searches of the home have continued to influence this Court's case law. In particular, those implications have shaped the development of the principle that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States v. United States Dist. Court E. Dist. Mich.*, 407 U.S. 297, 313 (1972). For example, when this Court held in *Payton v. New York* that the police generally must obtain a warrant to enter a suspect's home, without consent, in order to make an arrest, it relied heavily on "the tenet that 'a man's house is his castle,' " citing extensively from *Semayne's Case* and Otis's speech against the writs of assistance. 445 U.S. 573, 596–97 & nn.44, 45 (1980). And in *Georgia v. Randolph*, in the course of ruling that this requirement does not give way when a house is shared by two tenants and only one of them consents to the police's

entry, this Court again emphasized that we have "lived our whole national history with an understanding of 'the ancient adage that a man's house is his castle [to the point that t]he poorest man may in his cottage bid defiance to all the forces of the Crown.' " 547 U.S. 103, 115 (2006) (quoting *Miller v. United States*, 357 U.S. 301, 307 (1958) (alteration in original).

C. The Sanctity of the Home Also Forms the Foundation of Several Other Constitutional Protections.

The Second and Fourth Amendments are not the only constitutional protections that are fundamentally informed by the historic inviolability of the home. Perhaps unsurprisingly, "the ancient adage that a man's house is his castle," *Miller*, 357 U.S. at 307, in fact forms the foundation stone of several of our fundamental rights.

Most obviously, the sanctity of the home undergirds the oft-neglected Third Amendment right against the quartering of soldiers "in any house, without the consent of the Owner." U.S. CONST. amend. III. While that constitutional provision is often dismissed as obsolete, the right has perhaps been litigated so infrequently *precisely because*—due to the sanctity of the home—the right against quartering "is so thoroughly in accord with all our ideas," SAMUEL F. MILLER, LECTURES ON THE CONSTITUTION OF THE UNITED STATES 646 (1893), that it is "hard to imagine why any government ever contemplated putting its troops in private homes," Robert A. Gross, *Public and Private*

in the Third Amendment, 26 VAL. U.L. REV. 215, 215 (1991).

The forcible quartering of soldiers in private homes was no less an affront to the prevailing understanding of the inviolability of the home in the eighteenth century when the Third Amendment was adopted. When King Charles I resorted to quartering his troops in English homes in the 1600s, he "was denounced as a tyrant," and Parliament was led to include a complaint against the practice in the 1628 Petition of Right. *Id.* at 217. When England imposed the same practice on the American Colonies through the Quartering Act of 1775, the response was no less impassioned—indeed, the Declaration of Independence lists the offense of "quartering large Bodies of Armed Troops among us" as one of the justifications for "dissolv[ing] the Political Bands" between America and England. The memory of the offense also impelled the Founders to enact the Third Amendment—which, as Joseph Story remarked, "secure[s] the perfect enjoyment of that great right of the common law, that a man's house shall be his own castle, privileged against all civil and military intrusion." 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 747 (1833).

This "great right of the common law", *id.*, has also informed the scope of the First Amendment. In *Stanley v. Georgia*, this Court held that this provision prevented the State from "regulating obscenity . . . in[ ] the privacy of one's own home." 394 U.S. 557, 565 (1969). The right to Free Speech, the Court reasoned,

"takes on an added dimension" in "the context of . . . the privacy of a person's own home." *Id.* at 564. "If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch." *Id.* at 565.

Finally, the sanctity of the home has also been one of the cornerstones of the right to privacy that this Court has recognized implicit in the Constitution. In their famous law-review article on the right to privacy, for example, Warren and Brandeis emphasized that "[t]he common law has always recognized a man's house as his castle, impregnable, often, even to its own officers engaged in the execution of its commands." Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 220 (1890). The protection afforded the home is thus a central part of our constitutional tradition, forming the foundation of not only the Fourth Amendment's right against unreasonable searches and seizures, but also the fundamental rights protected by the freedom of speech, the right to keep and bear arms, and the right to privacy. Accordingly, this Court should not lightly override Petitioner's interest in the sanctity of his home in this case.

D. The Scope of the Protection Afforded the Home in the Context of Armed Self-Defense Extends to Locations Adjacent to the Home, Such as the One at Issue in This Case.

Cases articulating the scope of the castle doctrine in the context of armed self-defense shed light on the specific issue in this case: the extent to which the protection accorded the home extends to the property or outbuildings immediately adjacent to the home itself, such as the structure adjacent to the home in which the motorcycle at issue in this case was parked. As numerous decisions from the self-defense case-law show, a homeowner who was *assailed by a home-invader* from the same position where the motorcycle in this case was parked would have plainly been protected by the castle doctrine, in those States where that doctrine still prevails.

An early decision in point is *Haynes v. State*, 17 Ga. 465 (1855). In that case, Dennis Haynes was arrested and tried for murdering James Griggs, when Griggs had assaulted him by throwing stones at him when he had come out of his house to draw water from a nearby well on the property. *Id.* at 482. The trial court had charged the jury that the well where the altercation took place was properly considered part of Haynes's "habitation," since the protections of the home extended to not only "a dwelling, [but] kitchen or buildings contiguous to the dwelling. A store-house, even if the owner do not live in it at the time; and even a well, if in the curtilage," was to be considered part

of the home itself. *Id.* at 473. Though he was within the curtilage of the house when assaulted, the court instructed the jury that Haynes had no right to kill Griggs unless the latter had come onto the property to commit a felony. *Id.* On appeal, the Georgia Supreme Court agreed that the well in question was properly considered part of Hanes's home, but it disagreed that "the doctrine of *retreat*" was "applicable to this case." *Id.* at 483.

> If Haynes was entitled to the joint use and occupation of the well, and he went there to draw water for his family, was he bound to retreat therefrom, because violently assaulted by Griggs? And does his justification depend upon that? Must one retreat from his house or his family, and leave the former to the occupancy and the latter to the tender mercies of the aggressor? Such is not our understanding of the rights of a citizen.

Id.

Four decades later, this Court reached a similar interpretation of the scope of the castle doctrine, in *Beard v. United States*, 158 U.S. 550 (1895). Beard had been convicted of murdering Will Jones, after Jones and his brother John had entered Beard's property, armed, and attempted to steal Beard's cow. Beard confronted the Jones brothers in an " 'orchard lot,' a distance of about 50 or 60 yards from his house," *id.* at 552, ultimately killing one of the assailants who drew a pistol from his pocket. This Court held that

Beard had acted in self-defense, concluding that he was not "under any greater obligation when on his own premises, near his dwelling house, to retreat or run away from his assailant, than he would have been if attacked within his dwelling house," since the lot in question "constitute[ed] a part of his residence and home." *Id.* at 559–60.

These cases were consistent with the rule America had inherited from England. At common law, a person had the right to defend his home against a burglar—and not just the main dwelling place, but also "the out houses adjoining to the principal house." 3 WILSON, *supra*, at 64 (emphasis omitted). As Blackstone explained, the right to defend oneself against a burglar extended not just to the "mansion-house" proper, but also to "the barn, stable, or warehouse, [if it] be parcel of the mansion-house and within the same common fence, though not under the same roof or contiguous" since "the capital house protects and privileges all its branches and appurtenants, if within the curtilage or home-stall." BLACKSTONE'S COMMENTARIES, *supra*, at *225.

While the modern trend has been to abandon the castle doctrine in favor of a more general right to self-defense—without a "duty to retreat"—whenever a person is assailed in a place where he has a right to be, many States still retain a general duty to retreat and an exception for self-defense within the home. And those States continue to draw the same line as these early authorities—the protections of the home

extend to adjacent, exterior areas within the curtilage.

In *State v. Frizzelle*, for example, the North Carolina Supreme Court held that the protections of the castle doctrine extended to the defendant's "yard, about 30 feet from her front door." 89 S.E.2d 725, 725 (N.C. 1955). In *Frizzelle*, the defendant, a woman three-months pregnant, was prosecuted for killing her ex-husband (and the father of her unborn child). He had come to her home one night and "called her out to his car which he had parked in the edge of her yard." *Id.* After exchanging "some words," he "grabbed her and held her"—in the yard, near where his car was parked—"and while holding her began to beat her on the head with his fist and kicked her in the stomach." *Id.* at 726. She stabbed him with a knife, and he ultimately died from the wound. Frizzelle was convicted of manslaughter, but the Supreme Court reversed her conviction, concluded that the trial court had erred in failing "to explain the law . . . with respect to her right to stand her ground and defend herself, on her own premises." *Id.*

> It is true that in most of our cases involving the right of self-defense, where the defendant had been assaulted on his own premises, such assault occurred in the home or place of business of the defendant. However, one's own premises, in this connection, will not be limited to his dwelling house only, but in any event will extend to attacks within the curtilage of the home. And the curtilage of

> the home will ordinarily be construed to include at least the yard around the dwelling house as well as the area occupied by barns, cribs, and other outbuildings.

Id.

The New Hampshire Supreme Court's decision in *State v. Pugliese* is of the same accord. In that case, "the fatal struggle between the defendant and the decedent took place on the defendant's beach at some distance from his cottage." 422 A.2d 1319, 1321–22 (N.H. 1980). The Supreme Court held that Pugliese was entitled to a self-defense instruction:

> The State maintains that the term "dwelling" as used in the statute limits a person's privilege to use deadly force to those occasions when he is attacked within the four walls of the dwelling structure. We disagree. The common-law exception to the retreat rule applied to attacks occurring in the home, or within the "curtilage." . . . Thus, we agree that the defendant was entitled to an instruction that he could properly employ deadly force in defense of his person without retreating while outside his house but upon its grounds.

Id. at 1322.

The decision in *State v. Hewitt* offers another example of the extent of the castle doctrine's protections. *Hewitt* involved a prosecution of a husband, wife, and their two sons, for killing their neighbor, J.W. King,

who lived on a farm located across "a public highway" from the Hewitts. 31 S.E.2d 257, 257 (S.C. 1944). As the South Carolina Supreme Court explained, "[i]ll feeling had characterized the relations between them and their families for more than a year," and "this enmity culminated in the slaying of King, who at the time was standing in the highway opposite the entrance to the driveway leading into the yard of the Hewitts." *Id.* The altercation began when King

> advanced upon Mrs. Veva Hewitt . . . with a drawn knife, while she was standing within her yard near the driveway. To protect herself, she picked up a rock and threw it at the deceased . . . whereupon he dropped the knife and proceeded to throw large rocks at her, one of which grazed her body.

Id. at 258. At this point, fearing that Mrs. Hewitt "was in imminent danger of death or serious bodily harm," one of the other members of the family shot King, "who continued to stand in the highway" between their two properties. *Id.* King died from the gunshot, and Mr. and Mrs. Hewitt were convicted of manslaughter. The South Carolina Supreme Court reversed, concluding that "the jury was not sufficiently charged that one on his own premises is not held to the same rule as to the law of retreat, as is required of one not on his own premises." *Id.* at 258–59.

In the case currently before the Court, the search in question occurred in a place on Petitioner Collins's driveway "running past the house's front perimeter . .

. no more than a car's length away from the side of the dwelling," in a "portion of the driveway . . . enclosed on three sides" by the home and two brick walls. Petition at 3. As the cases just discussed make clear, had Petitioner been *assaulted* in that place adjacent to his home, in a State where the castle doctrine was in force, that rule would have protected his right to armed defense of himself and his home.

This Court should carefully consider this scope of the castle doctrine in determining the scope of the right against unreasonable searches of the home.

CONCLUSION

For the above reasons, this Court should reverse the judgment of the Virginia Supreme Court.

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Respectfully submitted,

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